



IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD

12 CRIMINAL APPLICATION NO. 656 OF 2025

Shivprasad S/o. Sarjerao Sakrate,
Age : 35 Years, Occu. : Service,
R/o. Phule Nagar, Majalgaon,
Tq. Majalgaon, Dist. Beed.

.... Applicant

VERSUS

1. The State of Maharashtra
Through The Police Inspector,
Majalgaon City Police Station,
Tq. Majalgaon, Dist. Beed.
2. Damodhar S/o. Ganpatrao Ghatul,
Age : 66 years, Occu. : Retired Govt. Servant,
R/o. Mangrul No.1, Tq. Majalgaon,
Dist: Beed.
At Present Chhatrapati Nagar,
By Pass Road, Majalgaon,
Tq. Majalgaon Dist: Beed.

.... Respondents

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Advocate for Applicant : Mr. Sharad S. Solanke
APP for Respondent No.1-State : Mr. G.A. Kulkarni
....

CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.

Dated : 26th February 2025

ORDER :-

1. The present application has been filed by the applicant
challenging the order dated 29.01.2025, passed by learned designated
Court i.e. Special Judge under the Maharashtra Protection of Interest

of Depositors (in Financial Establishments) Act, (for short “the MPID Act”), Majalgaon, Dist. Beed, in Criminal Miscellaneous Application No.79 of 2024, thereby directing the investigation under Section 175(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short “the BNSS”).

2. Heard learned Advocate for the applicant and learned APP for respondent No.1-State. There is no necessity to issue notice to respondent No.2.

3. The applicant challenges the order on the ground that, in view of mandatory provision of Section 175(3) of the BNSS, the Magistrate was duty bound to hear the police officer, but here in this case, though the notice was issued and it is stated that the investigating officer was present, the impugned order does not show that he was heard. It rather shows that the officer has filed his submissions.

4. Learned Advocate for the applicant relies on the decision in *Om Prakash Ambadkar Vs. State of Maharashtra and Ors., reported in AIR Online 2025 SC 63*, wherein a comparison was made between Section 175(3) of the BNSS with Section 156(3) of the Cr.P.C. and it is observed thus :-

“ A comparison of S. 175(3) of the BNSS with S. 156(3) of the Cr.P.C. indicates three prominent changes that have been introduced by the enactment of BNSS as follows :

a. First, the requirement of making an application to the Superintendent of Police upon refusal by the officer in charge of a police station to lodge the FIR has been made mandatory, and the applicant making an application under S. 175(3) is required to furnish a copy of the application made to the Superintendent of Police Under S. 173(4), supported by an affidavit, while making the application to the Magistrate under S. 175(3).

b. Secondly, the magistrate has been empowered to conduct such enquiry as he deems necessary before making an order directing registration of FIR.

c. Thirdly, the Magistrate is required to consider the submissions of the officer in charge of the police station as regards the refusal to register an FIR before issuing any directions under S. 175(3). The changes introduced by S. 175 (3) of the BNSS to the existing scheme of S. 156(3) merely codify the procedural practices and safeguards which have been introduced by judicial decisions aimed at curbing the misuse of invocation of powers of a Magistrate by unscrupulous litigants for achieving ulterior motives. Further, by requiring the Magistrate to consider the submissions made by the concerned Police Officer before proceeding to issue directions under S. 175(3), BNSS has affixed greater accountability on the Police Officer responsible for registering FIRs under S. 173. Mandating the Magistrate to consider the submissions of the concerned Police Officer also ensures that the Magistrate applies his mind judicially while considering both the complaint and the submissions of the Police Officer thereby ensuring that the requirement of passing reasoned orders is complied with in a more effective and comprehensive manner. ”

5. The second point that has been raised is that already first information report (for short “the FIR”) has been filed at the behest of another person and the investigation has been handed over to the Economic Offence Wing. The investigation is at the verge. Therefore, now the second FIR is not maintainable and therefore, he relies on the decision in *State of Rajasthan Vs. Surendra Singh Rathore, Criminal Appeal No.000847 of 2025 (Arising out of SLP(Crl.) No.16358 of 2024), decided by the Hon’ble Apex Court on 19.02.2025*, wherein after taking note of the previous decision, permissibility of registration of second FIR has been carved out which runs thus :-

“9.1 When the second FIR is counter-complaint or presents a rival version of a set of facts, in reference to which an earlier FIR already stands registered.

9.2 When the ambit the two FIRs is different even though they may arise from the same set of circumstances.

9.3 When investigation and/or other avenues reveal the earlier FIR or set of facts to be part of a larger conspiracy.

9.4 When investigation and/or persons related to the incident bring to the light hitherto unknown facts or circumstances.

9.5 Where the incident is separate; offences are similar or different.”

6. The third point that has been raised is that the applicant is merely an employee. He is serving as Chief Executive Officer. He is not the Director or responsible for the policy decisions of the institution i.e. Muktai Urban Co-operative Credit Society Limited, Majalgaon. Therefore, no offence can be said to have been committed by him.

7. The last point the learned Advocate wants to raise is that, now, few more persons are coming forward and lodging the report or filing applications for investigation and similar orders have been passed by the designated Court. When already the investigation is going on, the investigating officer can expand the area of investigation and can also include those persons who will come forward in support of the FIR. Different FIRs need not be registered and investigated separately.

8. As regards the first point raised, when the law has been crystallized by the Hon'ble Apex Court in **Om Prakash (Supra)**, it would be bounden duty of the Magistrate while passing an order under Section 175(3) of the BNSS to hear the police officer. Here the record that has been produced by the applicant and the impugned order would show that notice was served upon the police officer and

the Roznama dated 02.01.2025 would show that Police Inspector from Majalgaon Police Station attended the Court and orally asked for the adjournment by saying that he would file say on next date. The next date was 13.01.2025, but on that day, say was not filed. The submissions on behalf of the applicant were heard by the concerned Judge on 23.01.2025. Even on 29.01.2025, no say was filed by Police Inspector attached to Majalgaon Police Station and therefore, on the same day, the order was passed. Thus, it can be seen that the record is available that opportunity was given to the police officer to put forth his say i.e. sufficient compliance under Section 175(3) of the BNSS.

9. As regards the second point raised, in **State of Rajasthan (Supra)**, the principles emerging regarding the permissibility of registration of second FIR have been stated. Now, here the present informant states that, he had invested amount in fixed deposits in the said credit society. He wanted to withdraw the amount prematurely after he had reinvested taking into consideration the earlier period. But then, he says that he was not allowed to withdraw and only promises were given. Here as regards the present applicant is concerned, he states that even the present applicant had made a representation to him when he had visited the society's office in June

2021. He says that even the present applicant was present in the programme, wherein he was honoured and was given a Shawl, Shrifal and Bouquet.

10. The present informant further states that, at that time, a promise was made by the applicant that if he invests in the society, then the interest would be given @ 13% per annum. He says that, as he believed in those words, he invested to the extent of Rs.27,00,000/- i.e. 27 fixed deposits amounting to Rs.1,00,000/- each. After the period of fixed deposit was over, he says that, he continued with 18 fixed deposits worth Rs.23,00,000/-, but then he wanted to withdraw it prematurely. Only promises were given and he was abstained from withdrawing his amount.

11. All above contentions are very much personal in respect of the applicant which could not have been covered in the earlier FIR, because the earlier FIR or the other FIR would have been restricted to the investment by that informant. The incidences are separate and therefore, permissibility of registration of second FIR is governed under principle 9.5 given in **State of Rajasthan (Supra)** i.e. where the incident is separate; offences are similar or different.

12. The third ground which has been raised is that the offences are not attracted. However, we have considered the contents of the application in the earlier para and there are stipulations against the present applicant and thereby the informant intends to contend that the applicant has committed an offence under Section 318(4) of the Bharatiya Nyaya Sanhita, 2023 and therefore, there is no substance as regards to third point also.

13. As regards the last point, it cannot be the point to quash the present FIR. Each FIR will have to be considered on its own merits and therefore, we do not find this to be a fit case where we can exercise our powers under Section 528 of the BNSS. The application is dismissed at the threshold.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asd